

(a) First, in order to insure that the method of computing overtime pay permitted in this section will not in any circumstances be seized upon as a device for avoiding payment of the minimum wage due for each hour, the requirement must be met that employee's average hourly earnings for the workweek (exclusive of overtime pay and of all other pay which is excluded from the regular rate) are not less than the minimum. This requirement insures that the employer cannot pay subminimum nonovertime rates with a view to offsetting part of the compensation earned during the overtime hours against the minimum wage due for the workweek.

(b) Second, in order to insure that the method of computing overtime pay permitted in this section will not be used to circumvent or avoid the payment of proper overtime compensation due on other sums paid to employees, such as bonuses which are part of the regular rate, the section requires that extra overtime compensation must be properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

§ 778.418 Pieceworkers.

(a) Under section 7(g)(1), an employee who is paid on the basis of a piece rate for the work performed during nonovertime hours may agree with his employer in advance of the performance of the work that he shall be paid at a rate not less than one and one-half times this piece rate for each piece produced during the overtime hours. No additional overtime pay will be due under the Act provided that the general conditions discussed in § 778.417 are met and:

- (1) The piece rate is a bona fide rate;
- (2) The overtime hours for which the overtime rate is paid qualify as overtime hours under section 7(e) (5), (6), or (7);
- (3) The number of overtime hours for which such overtime piece rate is paid equals or exceeds the number of hours worked in excess of the applicable maximum hours standard for the particular workweek; and
- (4) The compensation paid for the overtime hours is at least equal to pay at one and one-half times the applica-

ble minimum rate for the total number of hours worked in excess of the applicable maximum hours standard.

(b) The piece rate will be regarded as bona fide if it is the rate actually paid for work performed during the nonovertime hours and if it is sufficient to yield at least the minimum wage per hour.

(c) If a pieceworker works at two or more kinds of work for which different straight time piece rates have been established, and if by agreement he is paid at a rate not less than one and one-half whichever straight time piece rate is applicable to the work performed during the overtime hours, such piece rate or rates must meet all the tests set forth in this section and the general tests set forth in § 778.417 in order to satisfy the overtime requirements of the Act under section 7(g) (2).

§ 778.419 Hourly workers employed at two or more jobs.

(a) Under section 7(g)(2) an employee who performs two or more different kinds of work, for which different straight time hourly rates are established, may agree with his employer in advance of the performance of the work that he will be paid during overtime hours at a rate not less than one and one-half times the hourly nonovertime rate established for the type of work he is performing during such overtime hours. No additional overtime pay will be due under the act provided that the general requirements set forth in § 778.417 are met and;

- (1) The hourly rate upon which the overtime rate is based in a bona fide rate;
- (2) The overtime hours for which the overtime rate is paid qualify as overtime hours under section 7(e) (5), (6), or (7); and
- (3) The number of overtime hours for which the overtime rate is paid equals or exceeds the number of hours worked in excess of the applicable maximum hours standard.

(b) An hourly rate will be regarded as a bona fide rate for a particular kind of work it is equal to or greater than the applicable minimum rate therefor and if it is the rate actually paid for such work when performed during nonovertime hours.